

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHARLES BRENDON and DANIEL
CHECKMAN, Individually And On Behalf
Of All Others Similarly Situated,

Plaintiffs

v.

ALLEGiant TRAVEL COMPANY,
MAURICE J. GALLAGHER, JR., SCOTT
SHELDON, STEVEN E. HARFST, and
JUDE I. BRICKER,

Defendants

Case No.: 2:18-cv-01758-APG-BNW

Order and Final Judgment

[ECF Nos. 74, 76]

On May 14, 2020, I conducted a telephonic hearing to determine: (1) whether the terms of the Stipulation and Agreement of Settlement dated December 27, 2019 (the “Settlement Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against the Defendants (as defined in the Settlement Stipulation), including the release of the Released Claims against the Released Parties, and should be approved; (2) whether judgment should be entered dismissing this Action with prejudice; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members; (4) whether and in what amount to award Lead Counsel fees and reimbursement of expenses; and (5) whether and in what amount to award Plaintiffs incentive fees.

It appears that the Notice of Pendency and Proposed Settlement of Class Action (“Notice”) substantially in the form I approved in my Order Granting Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, dated January 14, 2020 (“Preliminary Approval Order”) was mailed to all reasonably identifiable Settlement Class Members and posted to the website of the Claims Administrator, as I ordered.

1 It appears that the Summary Notice of Pendency and Proposed Class Action Settlement
2 substantially in the form I approved in the Preliminary Approval Order was published as I ordered.

3 **THEREFORE, I HEREBY ORDER AS FOLLOWS:**

4 1. The Plaintiffs' motion for final approval (**ECF No. 74**) and motion for attorneys'
5 fees (**ECF No. 76**) are granted.

6 2. This Order and Final Judgment incorporates by reference the definitions in the
7 Settlement Stipulation, and all capitalized terms used herein shall have the same meanings as set
8 forth therein.

9 3. The court has jurisdiction over the subject matter of the Action, Plaintiffs, all
10 Settlement Class Members, and the Defendants.

11 4. The prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules
12 of Civil Procedure have been satisfied in that:

13 (a) the number of Settlement Class Members is so numerous that joinder of all
14 members thereof is impracticable;

15 (b) there are questions of law and fact common to the Settlement Class;

16 (c) Plaintiffs' claims are typical of the claims of the Settlement Class they seek to
17 represent;

18 (d) Plaintiffs and Lead Counsel fairly and adequately represent the interests of the
19 Settlement Class;

20 (e) questions of law and fact common to the members of the Settlement Class
21 predominate over any questions affecting only individual members of the Settlement Class;
22 and

23 (f) a class action is superior to other available methods for the fair and efficient
adjudication of this Action, considering:

i. the interests of the Settlement Class Members in individually controlling
the prosecution of the separate actions;

ii. the extent and nature of any litigation concerning the controversy already

1 commenced by Settlement Class Members;

2 iii. the desirability or undesirability of concentrating the litigation of these
3 claims in this particular forum; and

4 iv. the difficulties likely to be encountered in the management of the class
5 action.

6 The Settlement Class is being certified for settlement purposes only.

7 5. I hereby finally certify this as a class action for purposes of the Settlement under
8 Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of all persons and entities that
9 purchased or acquired the publicly traded securities of Allegiant between June 8, 2015 and May 9,
10 2018, both dates inclusive (“Settlement Class Period”). Excluded from the Class are Defendants,
11 Allegiant’s officers and directors, their immediate family members, and entities in which such
12 excluded person hold a controlling interest. Also excluded are Settlement Class Members who
13 file valid and timely requests for exclusion in accordance with this Preliminary Approval Order
14 and persons with have no compensable damages. Plaintiffs are certified as the class representatives
15 on behalf of the Settlement Class (“Class Representatives”) and Lead Counsel, The Rosen Law
16 Firm, P.A., previously selected by Plaintiffs and appointed by me, are hereby appointed as Class
17 Counsel for the Settlement Class (“Class Counsel”).

18 6. In accordance with my Preliminary Approval Order, I find that the forms and
19 methods of notifying the Settlement Class of the Settlement and its terms and conditions met the
20 requirements of due process, Federal Rule of Civil Procedure 23, and Section 21D(a)(7) of the
21 Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform
22 Act of 1995; constituted the best notice practicable under the circumstances; and constituted due
23 and sufficient notice of these proceedings and the matters set forth herein, including the Settlement
and Plan of Allocation, to all persons and entities entitled to such notice. No Settlement Class
Member is relieved from the terms and conditions of the Settlement, including the releases
provided for in the Settlement Stipulation, based upon the contention that such Settlement Class
Member failed to receive actual or adequate notice. A full opportunity has been offered to the

1 Settlement Class Members to object to the proposed Settlement and to participate in the hearing
2 thereon. The notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully
3 discharged. Thus, all Settlement Class Members are bound by this Order and Final Judgment
4 except those persons listed on Exhibit A to this Order and Final Judgment.

5 7. The Settlement is approved as fair, reasonable, and adequate under Federal Rule of
6 Civil Procedure 23 and in the best interests of the Settlement Class. The Settlement is the result
7 of good faith, arm's-length negotiations between experienced counsel representing the interests of
8 the Class Representative, Settlement Class Members, and Defendants. The Parties are ordered to
9 consummate the Settlement in accordance with the terms of the Settlement Stipulation.

10 8. The Action and all claims contained therein, as well as all of the Released Claims,
11 are dismissed with prejudice as against each of the Defendants. The Parties are to bear their own
12 costs, except as otherwise provided in the Settlement Stipulation.

13 9. The Releasing Parties, on behalf of themselves, their successors and assigns, and
14 any other Person claiming through or on behalf of them (regardless of whether any such Releasing
15 Party ever seeks or obtains by any means, including by submitting a Proof of Claim and Release
16 Form, any disbursement from the Settlement Fund) are deemed to have fully released all Released
17 Claims against the Released Parties. The Releasing Parties are deemed to have agreed not to sue
18 the Released Parties regarding to any Released Claims in any forum and in any capacity. The
19 Releasing Parties are permanently barred from commencing, prosecuting, assisting, or in any way
20 participating in the commencement or prosecution of any proceeding, in any forum, asserting any
21 Released Claim, in any capacity, against any of the Released Parties. This does not bar the
22 Releasing Parties from bringing an action or claim to enforce the Settlement Stipulation or this
23 Order and Final Judgment.

10. All Persons are permanently enjoined from commencing or prosecuting any claims,
for contribution, indemnity, or otherwise against any of the Released Parties seeking as damages
or otherwise the recovery of all or any part of any liability, judgment, or settlement which they pay
or are obligated or to pay to the Settlement Class or any Settlement Class Member arising out of

1 or relating to such Persons' participation in any acts, facts, statements, or omissions that were or
2 could have been alleged in the Action, whether arising under state, federal, or foreign law as
3 claims, cross-claims, counterclaims, third-party claims, or otherwise, in any federal, state, or
4 foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any
5 other proceeding or forum. Further, nothing in the Settlement Stipulation or this Order and Final
6 Judgment shall bar or otherwise affect any claim for insurance coverage by any Defendant.

7 11. The proposed Plan of Allocation is a fair and reasonable method to allocate the Net
8 Settlement Fund among Settlement Class Members, and Lead Counsel and the Claims
9 Administrator are ordered to administer the Plan of Allocation in accordance with its terms and
10 the terms of the Settlement Stipulation.

11 12. All Settling Parties and their counsel have complied with all requirements of
12 Federal Rule of Civil Procedure 11 and the Private Securities Litigation Record Act of 1995.

13 13. Neither this Order and Final Judgment, the Settlement Stipulation (nor the
14 Settlement contained therein), nor any of its terms, nor any of the negotiations, documents, or
15 proceedings connected with them:

16 (a) is or may be deemed to be, or may be used as an admission or evidence of
17 the validity or invalidity of any Released Claims, the truth or falsity of any fact
18 alleged by Plaintiffs, the sufficiency or deficiency of any defense that has been or
19 could have been asserted in the Action, or of any wrongdoing, liability, negligence
20 or fault of the Defendants, the Released Parties, or any of them;

21 (b) is or may be deemed to be or may be used as an admission or evidence of
22 any fault, misrepresentation, or omission with respect to any statement or written
23 document attributed to, approved, or made by any of the Defendants or Released
24 Parties in any civil, criminal, or administrative proceeding in any court,
25 administrative agency, or other tribunal;

(c) is or may be deemed to be or shall be used, offered, or received against the
Parties, Defendants or the Released Parties, or any of them, as an admission or

1 evidence of the validity or invalidity of the Released Claims, the infirmity or
2 strength of any claim raised in the Action, the truth or falsity of any fact alleged by
3 the Plaintiffs or the Settlement Class, or the availability or lack of availability of
4 meritorious defenses to the claims raised in the Action;

5 (d) is or may be deemed to be or shall be construed as or received in evidence
6 as an admission against Defendants, or the Released Parties, or any of them, that
7 any of Plaintiffs' or Settlement Class Members' claims are with or without merit,
8 that a litigation class should or should not be certified, that damages recoverable in
9 the Action would have been greater or less than the Settlement Fund, or that the
10 consideration to be given pursuant to the Settlement Stipulation represents an
11 amount equal to, less than, or greater than the amount which could have been
12 recovered after trial.

13 14. The Released Parties may file the Settlement Stipulation or this Order and Final
14 Judgment in any action that is brought against them in order to support a defense or counterclaim
15 based on res judicata, collateral estoppel, full faith and credit, release, good faith settlement,
16 judgment bar or reduction, or any other theory of claim preclusion or issue preclusion. The Settling
17 Parties may file the Settlement Stipulation or this Order and Final Judgment in any proceeding that
18 becomes necessary to consummate or enforce the Settlement Stipulation, the Settlement, or this
19 Order and Final Judgment.

20 15. Except as otherwise provided here or in the Settlement Stipulation, all funds held
21 by the Escrow Agent shall be deemed to be *in custodia legis* and shall remain subject to the
22 jurisdiction of the court until such time as the funds are distributed or returned under the Settlement
23 Stipulation or further order of the Court.

16. Without affecting the finality of this Order and Judgment in any way, this court
retains exclusive jurisdiction over the Settling Parties and the Settlement Class Members for all
matters relating to the Action, including the administration, interpretation, or enforcement of the
Settlement Stipulation and this Order and Final Judgment, and including any application for fees

1 and expenses incurred in connection with administering and distributing the Settlement proceeds
2 to the Settlement Class Members.

3 17. Without further order of the Court, the Defendants and Class Representative may
4 agree to reasonable extensions of time to carry out any provision of the Settlement Stipulation.


5 18. There is no just reason to delay entry of this Order and Final Judgment. I therefore
6 direct immediate entry of judgment under Federal Rule of Civil Procedure 54(b).

7 19. The finality of this Order and Final Judgment shall not be affected, in any manner,
8 by rulings that I make on Class Counsel's application for an award of attorneys' fees and expenses
9 or an award to the Class Representative.

10 20. Class Counsel are hereby awarded 25% of the Settlement Amount in fees, which is
11 fair and reasonable, and \$28,078.85 in reimbursement of expenses. Defendants shall have no
12 responsibility for any allocations of attorneys' fees and expenses, and shall have no liability to
13 Class Counsel or any other person in connection with the allocation of attorneys' fees and
14 expenses. Class Representatives Charles Brendon and Daniel Checkman are awarded \$5,000 each,
15 which is fair and reasonable.

16 21. In the event the Settlement is not consummated in accordance with the terms of the
17 Settlement Stipulation, then the Settlement Stipulation and this Order and Final Judgment
18 (including any amendment and except as provided in the Settlement Stipulation or by order of the
19 court) shall be null and void, of no further force or effect, and without prejudice to any Settling
20 Party, and may not be introduced as evidence or used in any proceeding by any Person against the
21 Parties or the Released Parties, and each Party shall be restored to his, her, or its respective
22 litigation positions as they existed prior to September 10, 2019, as stated in the Settlement
23 Stipulation.

DATED this 14th day of May, 2020.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Parties Excluded From Settlement

Eric Hollander